

U.S. Application No. 10/695,008, filed October 28, 2003
Attorney Docket No. 15128US02
Response dated April 6, 2009
In Response to Office Action mailed January 6, 2009

REMARKS

Claims 1-37 are pending. Claims 1-37 are rejected.

Claims 1-37 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Publication No. 2005/0010527 A1 ("Rarick") in view of U.S. Patent No. 6,826,663 B2 ("Perego") and further in view of U.S. Patent No. 7,284,133 B2 ("Watanabe"). Applicants respectfully traverse the rejection for at least the reasons as set forth below.

Claim 1 recites, in part, "the decryptor being adapted **to variably bit roll the encrypted data** based on at least a data address".

In the Office Action, the Examiner alleges that **to variably bit roll the encrypted data** is described in Rarick at paragraph [32]. Rarick at paragraph [32] appears to describe a "swap operation".

The Office Action at page 3 notes that "*'swap' is viewed as analogous to the claimed 'bit roll'*".

It appears that the Office Action is stating that the swap operation described in Rarick at paragraph [32] corresponds to the decryptor that is adapted to variably bit roll the encrypted data as set forth in claim 1.

However, it is respectfully submitted that, although the Examiner is entitled to the broadest reasonable interpretation of claim terms, such an interpretation must be consistent with the specification of the present application. See, e.g., Phillips v. AWH Corp., 415 F. 3d 1303, 75 U.S.P.Q.2d 1321 (Fed. Cir. 2005) cited in M.P.E.P. § 2111 at page 2100-37 (Rev. 5, Aug. 2006).

The attention of the Examiner is respectfully drawn, for example, to FIG. 3 of the present application which distinguishes between a bit swapper 210 and a bit roller 200. The attention of the Examiner is also drawn to, for example, the description in the specification related to FIG. 3 of the present application.

It is respectfully submitted that the specification differentiates between a swap operation

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and a bit roll operation.

M.P.E.P. § 2111 states that “[d]uring patent examination, the pending claims must be ‘given their broadest reasonable interpretation **consistent with the specification.**’” M.P.E.P. § 2111 at page 2100-37 (Rev. 5, Aug. 2006)(bold added).

Patent Rule 75 states that “[t]he claim or claims must conform to the invention as set forth in the remainder of the specification and **the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.**” 37 C.F.R. § 1.75(d)(1) (bold added).

In view of M.P.E.P. § 2111 and 37 C.F.R. § 1.75(d)(1), it is respectfully submitted that a bit roll operation as described in the specification/description of the present application and claimed as a decryptor that is adapted “to variably bit roll the encrypted data” as set forth in claim 1 does not correspond, as alleged, to the bit swap operation as described in Rarick at paragraph [32].

Neither Perego nor Watanabe, as alleged, make up for the teaching deficiencies of Rarick, as alleged.

Accordingly, it is respectfully submitted that a *prima facie* case of obviousness has not been presented.

The same or similar arguments can be made, if applicable, with respect to other independent claims that were made with respect to independent claim 1.

In addition, to clarify the issues and to expedite prosecution before the Examiner, Applicants have made formerly independent claims 25 and 26 into dependent claims that depend from independent claim 23. The amendments to claims 25 and 26 are made herein without prejudice and without admitting or denying any of the Examiner’s allegations with respect to claims 25 and 26 and/or any subject matter recited therein. In addition, Applicants respectfully reserve the right to pursue, without prejudice, subject matter that has been withdrawn, amended and/or cancelled in a continuing and/or related application.

For at least the above reasons, it is therefore respectfully requested that the rejection under

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35 U.S.C. § 103(a) be withdrawn with respect to claims 1-37.

Applicants do not necessarily agree or disagree with the Examiner's characterization of the documents made of record, either alone or in combination, or the Examiner's characterization of recited claim elements. Furthermore, Applicants respectfully reserve the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

Applicants respectfully reserve the right to pursue, without prejudice, subject matter (e.g., claimed subject matter) that has been withdrawn, amended and/or cancelled in a continuing and/or related application.

With respect to the present application, Applicants hereby rescind any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: April 6, 2009

Respectfully submitted,

/Michael T. Cruz/

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